

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

:  
Docket #1:20-cv-08924-  
: CM  
NEW YORK CITY POLICING :  
DURING SUMMER 2020 :  
DEMONSTRATIONS :  
: New York, New York  
Defendant. : March 4, 2022  
: TELEPHONE CONFERENCE  
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PROCEEDINGS BEFORE  
THE HONORABLE GABRIEL W. GORENSTEIN,  
UNITED STATES MAGISTRATE JUDGE

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People of the State  
of New York:

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Proceedings conducted telephonically and recorded by  
electronic sound recording;  
Transcript produced by transcription service

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 THE CLERK: In the matter of In Re New York City  
3 Policing During Summer 2020 Demonstrations, 20-civ-8924.

4 Could we have appearances of counsel, beginning  
5 with the plaintiffs?

6 MS. LILLIAN MARQUEZ: Good morning, your Honor.  
7 This is Lillian Marquez of the New York State Attorney  
8 General's Office on behalf of plaintiff, People of the  
9 State of New York.

10 MR. WYLIE STECKLOW: Good morning, your Honor,  
11 Wylie Stecklow for the plaintiffs in the Gray matter.

12 MX. REMY GREEN: Good morning, Judge; Remy Green  
13 in the Sow, Hernandez and Minett matters. And for the  
14 reporter/recording, I should appear in the transcript as  
15 Mx. Green, spelled m-x-period, rather than Mr. or Ms.

16 MR. DANIEL R. LAMBRIGHT: Good morning, your Honor,  
17 Daniel Lambright on behalf of the Payne plaintiffs.

18 MR. ROBERT H. RICKNER: Good morning, your Honor.  
19 Rob Rickner on behalf of the Sierra plaintiffs.

20 MR. ANDREW BRIAN STOLL: And good morning, your  
21 Honor; it's Andrew Stoll on behalf of plaintiff, Cameron  
22 Yates.

23 MS. ALISON FRICK: Good morning, your Honor. This  
24 is Alison Frick on behalf of the Wood plaintiff.

25 HONORABLE GABRIEL W. GORENSTEIN (THE COURT): And

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2 for defendants?

3 MS. JENNY SUE-YA WENG: Good morning, your Honor.

4 This is Jenny Weng for the defendants.

5 MS. GENEVIEVE NELSON: Good morning, your Honor,  
6 Genevieve Nelson, also for defendants.

7 MS. AMY ROBINSON: Good morning, your Honor; this  
8 is Amy Robinson for the defendants.

9 THE COURT: Okay. Ms. Weng, are you speaking for  
10 defendants?

11 MS. WENG: For most of it, yes, your Honor.

12 THE COURT: Okay. All right, now, you know, there  
13 may be reason to hold another conference Tuesday or  
14 Wednesday. I had hoped not to do that based on my own  
15 schedule, but if I have to, I will.

16 So knowing that's available, Mx. Green, what do  
17 you think would be good things to discuss at this  
18 conference, which I think you said might be brief, if we  
19 were going to be holding another one?

20 MX. GREEN: Yes, your Honor. I think the core  
21 here is that -- well, there are two categories of issues,  
22 one being the documents and chart issues, and the other  
23 being deposition issues. Let's take them in order. As to  
24 the chart, defendants didn't do the assignment. What the  
25 Court ordered -- and kind of the spirit of the thing as I

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2 understood it -- was that we were supposed to know what  
3 documents we're getting. And rather than, you know,  
4 clarify that, the chart obfuscates it. And, worse than  
5 that, it seems to suggest that they're walking back, you  
6 know, this large array of commitments that we spent two  
7 months and dozens of hours meeting and conferring to get  
8 to.

9 So, you know, looking at this chart -- and I think  
10 the Court could look at it, too -- it's not possible to  
11 tell what we're getting, and it's not possible to tell what  
12 we're not getting. And so we're, you know -- I feel like  
13 we are not only not in a better place than we were on the  
14 11th of February, but I think we're in a worse place than  
15 we were, you know, in June last year, because all it does  
16 is muddy the water; and, you know, I'm at a loss for what  
17 to do next. I think maybe the right answer is by Monday we  
18 need -- or by, you know, close of business Monday we need a  
19 chart that says in reality what we're getting.

20 And, you know, I don't know how the corporation  
21 counsel is operating this case. If it were me, I would  
22 probably have a Word document on my computer that listed  
23 every document request, what searches I was doing and what  
24 I'd gotten, and then, you know, what I was withholding.  
25 And so, theoretically, if they're doing this in a

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2 reasonable way, I don't think it's much of a burden for  
3 them to say that.

4                   What I fear is that they're not doing this in a  
5 reasonable way and that that's kind of what they were  
6 getting at last time when they objected to producing all of  
7 something and called -- and described producing all of  
8 something as setting them up to fail. What I think is  
9 they're grabbing a couple of documents and hoping we don't  
10 figure out that things are missing. And that's why we're  
11 getting so much resistance to just finding out what they  
12 are and aren't producing.

13                   So, you know, I think that what we need is before  
14 we meet and confer again and before we have another  
15 conference is, you know, we need them to do the assignment.  
16 And I think that we should probably deal with the  
17 deposition stuff not in sequence but after we deal with  
18 this.

19                   THE COURT: Ms. Weng?

20                   Ms. Weng or whoever's speaking for defendant?

21                   MS. WENG: Yes, your Honor, first I want to  
22 apologize for coughing. And so to respond to Mx. Green, my  
23 understanding is that Mx. Green's issue is they want to  
24 know what they're getting. The deadlines are March 11th  
25 and March 18th, so we're still gathering the documents that

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2 the plaintiffs will be getting.

3 THE COURT: I think maybe just to be clear, if  
4 they ask for a particular thing and you know you're not  
5 giving them something within that category, they shouldn't  
6 be finding that out on March 18th; they should find that  
7 out right now. Maybe what you're telling me is we're not  
8 objecting to the requests where we say we're gathering  
9 documents; they're going to get everything within that  
10 request. And, you know, maybe that's a reasonable way to  
11 deal with it. But I just wanted to make clear if you read  
12 a request and you say, you know what, for this we can give  
13 them, you know, X, Y, and Z, but getting A, B, and C is too  
14 burdensome, they have to know that immediately.

15 MX. GREEN: Your Honor, if I may, this is what we  
16 were getting at in the letter. We got one thing  
17 that's -- we got one response, responsive documents  
18 previously provided, and didn't detail that they were  
19 withholding anything. But those were documents that, you  
20 know, based on the last conference we had, the Court  
21 accepted their burden objection and said that they weren't  
22 going to have to produce certain things. So if you read  
23 that kind of on its face, the chart seems to suggest that  
24 they're waiving those objections. And that's the real  
25 problem.

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2 THE COURT: Well, I mean, that's just for one  
3 particular document request. I'm trying to do a little bit  
4 bigger picture on this. So I guess I was trying to get  
5 Ms. Weng to react to what I just said.

6 I mean, do you understand --

7 MS. NELSON: Your Honor --

8 THE COURT: Go ahead.

9 MS. NELSON: -- this is Ms. Nelson, if I may?

10 THE COURT: Go ahead.

11 MS. NELSON: In response to your question about  
12 objections and we limited the objections, my understanding  
13 of what we did on the chart is we limited the objections to  
14 burden or privilege as to what we weren't producing. And I  
15 believe there is a column on the Chart F where we did try  
16 to explain what it is that we would not be producing.

17 THE COURT: So if that's blank, that means you're  
18 producing it. My point is if you're not saying that you're  
19 not going to produce something within the category, that  
20 means you're not objecting on burdensome or any other  
21 grounds, and you're producing whatever's in the category.

22 MS. NELSON: And one of the reasons we wanted  
23 Ms. Weiss here is she understands mostly how the chart was  
24 finalized. But it's either in Column E or Column F where  
25 we indicate that something will not be produced. For

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2 example --

3 THE COURT: If it's blank -- Ms. Nelson, if it's  
4 blank, that means it will be produced; is that right?

5 MS. NELSON: That is my understanding, your Honor,  
6 which is very different from what was previously produced.  
7 Our understanding and -- of what was to be done and  
8 Mx. Green's complaint that she's raising is they don't know  
9 what they will be getting. And so that is what we are  
10 working towards for the March 11th and March 18th  
11 deadlines. So if it says Previously Produced, it means  
12 that they've already received those --

13 THE COURT: That's a different category --

14 MS. NELSON: I agree.

15 THE COURT: -- for a very different issue.

16 When we're talking about previously produced,  
17 that's not what I'm talking about. I'm talking about  
18 things that you are going to produce where you said this  
19 will be produced on the 18th, and Mx. Green is saying the  
20 fact that that's all you're saying, he assumes, though he's  
21 skeptical, that you mean you're producing everything. And  
22 Mx. Green is concerned that in fact you'll produce  
23 something less than the full category because you came up  
24 with some things that you decided were too burdensome or  
25 couldn't be done or have some objection to, and that won't

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2 be discovered until the 18th. And I'm saying that's not  
3 acceptable.

4 MS. NELSON: I understand. Your Honor, if --

5 THE COURT: Okay, now, we have a separate issue,  
6 which is where you say, "Oh, we've already produced that."  
7 I haven't gotten there yet.

8 MS. NELSON: Okay. So we're happy to take another  
9 look at the chart, but my understanding of what is on the  
10 chart is those areas where we're raising an objection,  
11 either privilege or burden. We've put that in either  
12 Column E or Column F on the chart.

13 THE COURT: Okay. And if it's not there, there's  
14 no such objection, right?

15 MS. NELSON: Except -- your Honor, I am reluctant  
16 to speak for some of these because, again, I think  
17 Ms. Weiss can better explain for ones where the --  
18 particularly the consolidated BRIs where the productions  
19 have been made. For a year now we've been making  
20 productions on those.

21 So I think the best that I can offer is I think we  
22 did this, but we will take another look at the chart,  
23 particularly Columns E and F. But I believe that's what's  
24 done.

25 THE COURT: Okay. We have a separate issue. And

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2 we're going to talk about the process here. My view is  
3 there should be an all-day, starting nine a.m., meet-and-  
4 confer Monday going through all of this so that everything  
5 can be hashed out. Is there anything preventing that?

6 MS. NELSON: Well, Ms. Weiss really is very sick.  
7 So I am not sure about here availability for Monday.

8 THE COURT: All right. I didn't know the degree  
9 of her illness. To the degree that you know she will not  
10 be available Monday?

11 MS. NELSON: Well, the reports I've gotten is that  
12 she is very sick. I wouldn't believe she'd be at work on  
13 Monday.

14 THE COURT: All right, I think we're going to  
15 have to play this by ear a little bit, Mx. Green. I know  
16 it's frustrating to you. I know you feel there should be  
17 another person from the City who can answer all these  
18 questions, but we have to deal for the moment right now  
19 with what we have. And this is apparently an extraordinary  
20 circumstances. I'm going to figure out a way to, you know,  
21 make myself available if necessary. But, I mean, you folks  
22 need to -- I mean, I think that there's things -- I think  
23 it's worth conferring on Monday even without Ms. Weiss,  
24 because I think there are things that could be raised that  
25 potentially could have answers. So who is -- Ms. Nelson,

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2 is it you, Ms. Weng, who is the person who is going to be  
3 most knowledgeable about this, or you'll do it together?

4 MS. WENG: Your Honor, I guess we'll speak  
5 internally, and if it's okay with your Honor, we'll let  
6 plaintiffs' counsels know. But I think most likely we'll  
7 be doing it together, your Honor.

8 MS. NELSON: My apologies, your Honor; I got cut  
9 off the conference line. I had to dial back in. This is  
10 Ms. Nelson.

11 THE COURT: Okay. All right, what I was saying is  
12 that you and Ms. Weng need to be available first thing  
13 Monday to go through as many issues as possible that you  
14 can deal with.

15 MX. GREEN: Your Honor --

16 MS. WENG: I apologize -- oh, I'm sorry. Before  
17 we move on, I just saw on my calendar, I'm supposed to be  
18 at a deposition all day Monday.

19 THE COURT: On this case?

20 MS. NELSON: Yes

21 MS. WENG: It's -- yes.

22 MS. NELSON: On the Yates case, your Honor.

23 MS. WENG: Yes.

24 MR. STOLL: Your Honor, this is Andrew Stoll  
25 speaking for Cameron Yates. It was my understanding

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2 another attorney, Giancarlo Vecciarelli, was going to be  
3 conducting that deposition.

4 MS. WENG: Yes. He was defending, and I was going  
5 to be on --

6 MS. NELSON: And, yes, (indiscernible) will be  
7 there. Miss --

8 MR. STOLL: I'm sorry?

9 MS. NELSON: -- (indiscernible) there to  
10 supervise. He is a new --

11 THE COURT: No, no. We need another supervisor.  
12 No, Ms. Weng has to be available Monday to discuss the  
13 discovery issues. You have no supervisor on the case.

14 MS. NELSON: It's Ms. Weng --

15 THE COURT: We have to take the --

16 MS. NELSON: (Indiscernible)

17 THE COURT: Sorry?

18 MS. NELSON: It's Ms. Weng or I or Ms. Weiss, your  
19 Honor.

20 THE COURT: You need another person. We can't --  
21 we can't treat this case like this anymore. You have to  
22 have a lot more flexibility. You already have an attorney  
23 taking the deposition on this case. Another person can  
24 supervise.

25 All right, Mx. Green --

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MX. GREEN: Your Honor, I propose -- here is what I would say about this. I have a class on Monday, so I'm happy to cancel it and, you know, reschedule with my students.

6

THE COURT: What time's your class?

7

MX. GREEN: It's from 10:45 to noon. We can also take a break then from the meet-and-confer.

9

But the fear I have, especially without, say, something like the prophylactic order in place that we propose, is that, you know, it's not like we haven't gone line by line through every single one of these requests at a meet-and-confer before. We have. One of the problem that we have here is that they've walked all of that back in the charts. And so, you know --

16

THE COURT: I don't think it's all been walked back, Mx. Green. I think let's --

18

MX. GREEN: No, you're right. It's not -- I overstated -- a lot of it has been walked back. And --

20

THE COURT: I'm not even sure it's a lot. I think there's -- I think if someone could make commitments, and my problem -- the (indiscernible) question is whether Ms. Nelson can do so.

24

You know, I mean, I think this illness is really throwing us off; that's the problem. And, you know, if we

1 PROCEEDINGS 16

2 have to -- I mean, I think the better thing, perhaps,  
3 Mx. Green, is just to wait a day or two, business day or  
4 two.

5 MX. GREEN: Yes. I think that that makes sense.  
6 I mean, the only thing we were afraid of is, you know, the  
7 issues on the back end. But --

8 THE COURT: No, I understand. We have to deal  
9 with the issues on the back end.

10 What's going on with the depositions in terms of  
11 right now how many are scheduled, unscheduled, what's going  
12 on?

13 MS. MARQUEZ: Your Honor, this is Lillian Marquez  
14 from the AG's office, if I may speak to that issue?

15 THE COURT: Go ahead.

16 MS. MARQUEZ: So, as of late, Chief Gallotti, who  
17 was scheduled for February 3rd and 4th, and Chief Steven  
18 Hughes, scheduled for March 3rd and March 4th, were  
19 cancelled by the City, as was Chief O'Reilly, who was set  
20 to go for March, I believe, 8th, and was actually moved to  
21 March 11. The concern that plaintiff has is that the Court  
22 ordered the defendants to schedule these higher-level  
23 depositions and to limit any last-minute schedule changes  
24 to circumstances that made participation in a deposition  
25 essentially impossible. However, the explanations that the

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2 City has given, when they have given it, do not meet that  
3 criteria. So for Chief Gallotti the explanation was that  
4 he was participating in an NYPD-wide event on dates that  
5 were not coinciding with his deposition. Apparently, the  
6 cancellation was due because the City could not schedule  
7 him -- excuse me -- prepare him, and perhaps because they  
8 were delaying the preparation until just a day or two  
9 before the scheduled depositions.

10 And then for Chief Steven Hughes, just on  
11 March 1st this week the City, specifically, Ms. Robinson,  
12 emailed plaintiffs stating simply that they needed to  
13 schedule the deposition, that only upon question for a  
14 reason stated we are not prepared to go forward with a two-  
15 day deposition.

16 So it's plaintiff's position that these  
17 explanations that a lack of preparation as a reason for  
18 cancelling unilaterally and last minute these depositions  
19 is not in line with the Court's order back in December. So  
20 these need to be real based, and we just need to make sure  
21 that we're trying to keep as many dates as we can, even  
22 with the potential for an extension.

23 THE COURT: What are the numbers in terms of  
24 things that have been scheduled in the future?

25 MS. MARQUEZ: So there's -- I don't have exactly

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2 the number -- there's about, I would say, about twenty.

3 But then there's a number of depositions which the City has  
4 refused to schedule on the basis that the current schedule  
5 does not allow it and that they will not schedule it unless  
6 and until there is an extension. And the number of those  
7 depositions that have not been scheduled number around 15.

8 THE COURT: So the current date is April 22nd for  
9 the cutoff, is that right?

10 MS. ROBINSON: Correct, your Honor.

11 MS. MARQUEZ: I believe that's correct, your  
12 Honor.

13 THE COURT: Okay. So there's twenty scheduled for  
14 April 22nd?

15 MS. MARQUEZ: Approximately. And I apologize for  
16 not having the exact number.

17 THE COURT: Okay. And there's another --

18 MS. ROBINSON: There are about fifty in total,  
19 your Honor. This is Amy Robinson for defendants.

20 THE COURT: Fifteen through April 22nd?

21 MS. ROBINSON: No. There are five-zero in total  
22 being taken, and before April 22nd there are 29.

23 THE COURT: So 29 scheduled for April 22nd?

24 MS. ROBINSON: Yes.

25 THE COURT: Okay, and you think there's an

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2 additional how many?

3 MS. MARQUEZ: That are being scheduled, your  
4 Honor?

5 MS. ROBINSON: There are -- there are a total of  
6 about fifty, all told.

7 THE COURT: Does that mean -- I don't know how  
8 many you've already done. So are you trying to tell me  
9 that there are 21 that remain to be scheduled? I'm just  
10 looking for a number, if you know it.

11 MS. ROBINSON: There's 14 on the -- in terms of  
12 higher-level depositions that are yet to be scheduled, not  
13 including some of the ones -- so Chief Steven Hughes still  
14 needs a few more dates, as well, and Gallotti. So that  
15 puts it at about 16 that needs to be scheduled.

16 MS. NELSON: Your Honor, this is Ms. Nelson. I  
17 think in addition to the high-level depositions, there are  
18 also depositions in single matters, as well, like the Gray  
19 depositions are going forward, as well as depositions in  
20 Sow.

21 THE COURT: They're going forward before  
22 April 22nd, or -- and they're not included in the 29 that  
23 were just mentioned? Or they're included --

24 MS. NELSON: Ms. Robinson, were they included in  
25 the --

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MS. ROBINSON: I'm not really sure of the -- I  
don't have -- I don't believe that I have any Gray  
plaintiffs in my list.

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Your Honor, I'm doing mostly the 30(b) (6) higher-  
up depositions, so I'm afraid I'm looking at that list, and  
I don't have the total list of depositions, including, you  
know, the Gray plaintiffs, for example.

9

10

MS. NELSON: So the number of depositions that are  
proceeding --

11

MS. ROBINSON: Are much higher.

12

13

MS. NELSON: -- for April 22nd is higher than that  
number that Ms. Robinson just quoted to you.

14

THE COURT: Okay.

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MX. GREEN: Your Honor, this is Remy Green. In  
Hernandez, for example, we've served notice. And they may  
be counting those. We haven't had a response to our notice  
yet, and so those aren't on the schedule. But they might  
be part of what they're counting. It may also be that  
they're counting days as opposed to deponents, and that  
might account for some of the discrepancies.

22

23

UNIDENTIFIED: We are not. For example, the  
deposition on Monday is, I think, on the Yates case.

24

25

MS. NELSON: Right. And, your Honor, just --

THE COURT: Go ahead.

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2 MS. NELSON: Just so that you know, before the  
3 high-ranking depositions began, plaintiffs requested and  
4 defendants agreed to two-day depositions for 14 deponents,  
5 which means 14 extra days of depositions and 14 extra days  
6 of prep. So that has gone a long way into preventing us  
7 from meeting the April 22nd deadline, as well.

8 THE COURT: Okay. I've already set up and allowed  
9 some slippage in that deadline, so the City should be  
10 scheduling depositions certainly through May 22nd. All  
11 right? So that should not be a basis for not scheduling a  
12 deposition, Ms. Robinson; do you understand that?

13 MS. ROBINSON: I missed that, your Honor. We  
14 should not be not scheduling through what date?

15 THE COURT: You should be scheduling through at  
16 least through May 22nd, for sure.

17 MS. ROBINSON: Okay. Okay. I was not aware of  
18 that. We could probably be scheduling through June 22nd,  
19 to be honest with you.

20 THE COURT: Well, I don't know that I'm giving you  
21 till June 22nd.

22 MS. ROBINSON: Understood.

23 THE COURT: But at least start. I mean, you  
24 can -- I assume you can do more depositions on more than  
25 one day; am I right about that?

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MS. ROBINSON: It depends on the --

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THE COURT: More than one deposition on a day --

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MS. ROBINSON: Right. It depends on the -- your Honor, it depends on the level of the witness. If we have two -- for example, we wouldn't necessarily double track two 30(b) (6) witnesses, but we would do a 30(b) (6) witness, and maybe a plaintiff would go or a deponent in the Gray case, for example. But we generally wouldn't have two high-ranking people going on the same day.

11

THE COURT: All right, let's do this. Schedule everything now, and I'll give you till June 10th to send everything in. All right?

14

MX. GREEN: Your Honor, if I may also just note, due in part because, as I mentioned, I think the City is preparing these witnesses too close to the deposition dates, when there is a cancellation, those dates go unused by any deposition, given the late nature of it.

19

THE COURT: Right.

20

MX. GREEN: So I'd -- I think you know where I'm going with that.

22

MS. ROBINSON: And, your Honor, just --

23

THE COURT: Well, yes, I'm trying to think -- I'm trying to think how -- first of all -- I'm sorry, was someone from the City just trying to speak?

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2 MS. ROBINSON: Yes, your Honor. This is Amy  
3 Robinson. To begin with, we've cancelled one deposition of  
4 a higher-ranking person, which was Steven Hughes. It's my  
5 understanding that plaintiffs wanted us to push off Chief  
6 Gallotti and Deputy Commissioner Miller to later dates.

7 MX. GREEN: That's --

8 MS. ROBINSON: So I believe that is --

9 THE COURT: Sorry? You disagree?

10 MX. GREEN: I disagree. I mean, I could --

11 THE COURT: No, no, no. Plaintiff just disagrees?

12 MX. GREEN: Correct.

13 MS. ROBINSON: Yes. So, if I may clarify --

14 THE COURT: Okay, people need to identify  
15 themselves before they speak.

16 MS. MARQUEZ: This is Lillian Marquez again from  
17 the AG's office. If I may clarify? Chief Gallotti got an  
18 email from Ms. Robinson on the 26th of January, just short  
19 of in a week before the scheduled dates; emailed  
20 plaintiff's counsel stating that he was attending, Officer  
21 Tina Rolles on January 28th and February 2, which were not  
22 the scheduled deposition dates but stated because of his  
23 attendance on different dates, he could not attend those  
24 two scheduled dates. So Chief O'Reilly, it was again at  
25 Ms. Robinson's request without explanation despite

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2 plaintiffs' request for one, that it's been pushed back to  
3 a different date. And so those are all requests from the  
4 City to change these higher-level depositions.

5 MS. ROBINSON: Okay, your Honor, I misspoke. Yes,  
6 Chief Gallotti was unable to attend his deposition because  
7 of the murder of the two officers and their funeral  
8 arrangements. I completely forgot about that. That is  
9 accurate.

10 THE COURT: All right, you need, for the high-  
11 level people, to have backup dates. That is not something  
12 that's happened already?

13 MS. ROBINSON: Well, what we did was we had placed  
14 backup dates into the calendar, but it was clogging up the  
15 calendar so much before April 22nd, that plaintiff said,  
16 well, let's ease off of the ultimate dates and try to get  
17 these things scheduled. And so that's what we've done.

18 And with respect to Chief O'Reilly --

19 MX. GREEN: Your Honor, that's -- this is Remy  
20 Green. That's also not accurate. They asked us if we  
21 could do that. We did --

22 MS. ROBINSON: No, we did not.

23 MX. GREEN: -- not ask for -- Ms. Robinson, I was  
24 at that meet-and-confer --

25 MS. ROBINSON: We did not -

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2 MX. GREEN: -- I'm happy to send the Court our  
3 notes, but that's just not true.

4 THE COURT: Let's figure out how to solve the  
5 problem.

6 What's your proposed solution on backup dates,  
7 Mx. Green or whoever's speaking, Ms. Marquez, whoever?

8 MS. MARQUEZ: Well, I will also note that, for  
9 instance, for Chief Hughes, who was supposed to go on  
10 yesterday and today, the plaintiffs did offer an  
11 alternative that we hold the second date, the later in  
12 time, so that defendants could at least have the Thursday  
13 to prepare their witness.

14 And so I think that the first step is,  
15 especially for these depositions which have two dates, and  
16 I think I just want also to clarify that point. The reason  
17 why a lot of these deponents have two dates is because  
18 they've been cross-designated as both a fact and a 30(b)(6)  
19 witness, so they got one date for each -- that we at least  
20 attempt or defendants attempt to keep the second dates and  
21 that -- I mean, the original proposal is that we keep to  
22 the Court's order from December that late scheduling -- no,  
23 conflicts should be limited to words and impossibility, not  
24 simply due to the defendants' failure to prepare their  
25 witnesses. So as a third alternative in terms of

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2 alternative dates, we have on the table a proposal to  
3 defendants, which they recently objected, that we have a  
4 double-tracking of certain dates so that at least we have,  
5 even if we lose a day of higher-level folks, we have  
6 another deposition going that day.

7 MS. ROBINSON: Your Honor, that --

8 MS. MARQUEZ: That would be a --

9 MS. ROBINSON: -- the plaintiffs' proposed double-  
10 tracking, we simply cannot do that. For example, for Chief  
11 Monahan, the chief of the department is going next week.  
12 He requires two days of deposition, two days of prep. To  
13 double-track that would reduce our staffing levels  
14 extremely. It would just be --

15 THE COURT: Listen, listen, I don't know that we  
16 have -- now that you have some breathing room at the other  
17 end, I don't know that we have to worry about double-  
18 tracking in the same way. And there has to be -- the high-  
19 level people have to block out backup dates, and they have  
20 to be before June 10th, and it has to be done realistically  
21 so that if they all back out, they can all be done on their  
22 later dates. If that requires double-tracking, so be it.  
23 You must give alternate dates for all the high-level  
24 people.

25 You know, the odds are if you tell them the

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2 seriousness of this and if you prep them a week in advance  
3 and not two days in advance, it's not going to be an issue.  
4 But you absolutely must have backup dates that you inform  
5 the other side of, saying, "Here's the date for this  
6 person. And if that date doesn't work, here's the date or  
7 dates that they're going to do it, if for some reason the  
8 first one doesn't work." And if the first one doesn't  
9 work, I'm trying to think, this has got to be, you know, an  
10 emergent project like attending a funeral, not like  
11 attending a conference. It's got to be something that is  
12 of an emergent, emergency nature.

13                   And I'm trying to think how -- I think that's  
14 going to have to be expressed in a representation from the  
15 attorney that describes in detail what the problem is and  
16 why this person is completely prevented from attending the  
17 deposition on that date. And preparation is not going to  
18 be an excuse. It's going to be a problem of that person.  
19 Your preparation's going to have to happen in advance. And  
20 the plaintiffs should feel free to test this deposition  
21 under oath if they have any doubts when the deposition  
22 ultimately happens. So make sure your deponents tell you  
23 very accurately what the problem is.

24                   MS. ROBINSON: I understand -- this is Amy  
25 Robinson, your Honor. I understand. Understood. And I'm

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2 just a little concerned that with backup dates we could --  
3 it would be difficult --

4 THE COURT: You could end up in double-tracking, I  
5 don't know. But you're going to have to get another  
6 attorney on the case. I don't know what else to tell you.  
7 I hope you will impress upon your deponents how important  
8 it is to appear for their date.

9 MS. ROBINSON: I will in fact do that, your Honor.  
10 My only concern is the June 10th dates.

11 MX. GREEN: Your Honor, if I may? I suspect not  
12 everybody has seen this yet. And as we're thinking about  
13 June 10th, the Second Circuit just in part reversed Judge  
14 McMahon's decision to deny intervention to the FDA. And I  
15 suspect that that's going to affect where our end date is  
16 at the end of the day because we're going to have a bunch  
17 of new -- or well, we're going to have one new party in a  
18 sense who is starting from square one on discovery. And,  
19 you know, I'm not sure how realistic keeping the time  
20 schedule is going to be, given that.

21 THE COURT: Breaking news. I mean, I can't see  
22 that we should halt depositions for this. I mean, maybe  
23 they have some additional deponents or something.

24 MX. GREEN: To be clear, yes. I don't think that  
25 we should halt depositions in any way. I just -- I suspect

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2 that's just going to, given that we're going to have new  
3 document requests sent in all directions and then they're  
4 going to have whoever they want to depose, that the  
5 ultimate end date is going to probably have a lot more play  
6 on it than we were all thinking. And maybe that means we  
7 do have a little more breathing room than we thought to  
8 kind of weave all of that together, not that we would stop  
9 taking depositions, but that, you know, for the depositions  
10 that haven't been scheduled yet maybe there's a little more  
11 room, and for making sure that we do have these backup  
12 dates, we have a little more room.

13 MS. NELSON: Your Honor, this is Ms. Nelson. I  
14 don't believe that just document requests are going to be  
15 impacted by the addition of another party. But to the  
16 extent they also want to depose some of these high-level  
17 officials, I don't know that it would be efficient to go  
18 forward with some of them now just so that we have to bring  
19 them back at a later date. We already have difficulty  
20 scheduling them now.

21 THE COURT: All right, listen, I have to digest  
22 this news. I don't want to make any decisions right now on  
23 it. I don't want to -- let's digest this all. Proceed as  
24 we've been proceeding. Everything I've just ordered is the  
25 case: same backup dates, June 10th for the moment. If you

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2 have a proposal for what we should do next, I think you  
3 should talk about this and --

4 MS. NELSON: Your Honor, this is Ms. Nelson again.  
5 My apologies. So the deposition, my understanding is Chief  
6 Monahan is going to be deposed next week. We should  
7 proceed with his deposition.

8 THE COURT: I mean, you know, the mandate doesn't  
9 even issue for 45 days. I guess we could -- I'm trying to  
10 think procedurally whether they can be instantly inserted  
11 in the case.

12 MS. MARQUEZ: If I may, your Honor? This is  
13 Lillian Marquez again from the AG's office --

14 THE COURT: Folks, hold on a second, I want to  
15 look at this.

16 (Brief silence.)

17 THE COURT: Folks, this is Judge Gorenstein. Are  
18 you all there? Mx. Green?

19 MX. GREEN: Yes, your Honor.

20 UNIDENTIFIED: Yes, Judge.

21 THE COURT: And Ms. Weng and everyone else.

22 Okay, I think we have to halt depositions of  
23 higher-level people and that that could, you know,  
24 reasonably expect -- for which we could reasonably expect  
25 the new plaintiffs, the PBA, to need to participate in the

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2 depositions. I think we have to do that. I'm going to  
3 issue an order that allows them to start participating now.  
4 And I'm just trying to think what I should tell them. I  
5 mean, they need to be provided with all document discovery  
6 produced to date. Who is in the best position to do that  
7 for them? Do you have some platform that has it all that  
8 it can be transmitted from that platform? I don't want to  
9 put you on the spot, but someone has to figure out how to  
10 do that.

11

Hello?

12

13 MS. NELSON: Your Honor, this is Ms. Nelson. I  
14 think we're -- I'm reluctant to speak for plaintiff, but I  
15 think I'm right -- I think we all feel a little put on the  
16 spot, and maybe we can think about how best to do that, and  
we can advise the Court.

17

18 THE COURT: And then we need -- you know, I'm  
19 going to give them a deadline. It's hard to believe  
20 there's any discovery request they need that hasn't already  
21 been made, but I'm going to give a deadline to make such  
22 requests, you know, a quick deadline. And, you know, we  
23 shouldn't hold up depositions of, you know, that don't  
involve -- you know, the --

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MS. NELSON: The other depositions --

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MX. GREEN: Your Honor --

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2 THE COURT: -- the individual kind of depositions.

3 Go ahead, Mx. Green.

4 MX. GREEN: My memory is that they have not -- and  
5 I know that Courts can excuse this, and I think the Second  
6 Circuit did, having not spent hours on the order -- I don't  
7 think they filed an answer, and they propose to intervene  
8 as defendants, so, you know, I think there are certainly  
9 discovery requests we would intend to serve on them,  
10 especially defendants, depending on what affirmative  
11 defenses they raise and what they deny. I think, you know,  
12 we should just all be thinking about the fact -- unless I'm  
13 completely wrong, and someone please correct me -- we don't  
14 have a pleading from them yet. And that obviously affects  
15 the shape of what discovery will follow.

16 THE COURT: So I -- all right, so we need to get  
17 them to file their answer --

18 MX. GREEN: Right.

19 THE COURT: -- (indiscernible) within 21 days or  
20 something.

21 All right, file their answer. And the discovery  
22 requests probably the same date.

23 MS. MARQUEZ: Your Honor, this is Lillian Marquez  
24 again from the AG, if I may?

25 THE COURT: Yes.

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MS. MARQUEZ: First, I just want to make sure we're all clear on what it means for higher-level depositions. So we have, of course, a lot of cross-designees for former chiefs -- or excuse me -- for current high-level officers as being both fact and 30(b) (6). And then, of course, we have a slate of folks who are simply fact and a lot of whom are actually retired now. And so we just want a clarification. We would propose that only the 30(b) (6) depositions be delayed so that the intervenors can join but that we be able to move forward both with the fact-only depositions, whether they be high level or line level.

14

MS. NELSON: Your Honor --

15

THE COURT: Yes.

16

MS. NELSON: -- this is Ms. Nelson. I think in theory that sounds practical, but it might not be that simple to -- for some of these witnesses to parse out what is the 30(b) (6) portion and what is the fact portion, particularly for these high-level officials that --

21

THE COURT: Yes, I think I'm going to have to defer to some degree with the City on this because they're the ones who are going to have to bring them back. That's the risk here.

25

MS. MARQUEZ: I could respond to that, your Honor.

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2 Again, this is Lillian Marquez. Actually, that's what  
3 they've been doing to date. So we had agreed to have  
4 distinct days or distinct sections of depositions, one  
5 section being designated as 30(b)(6) and the second being  
6 designated as fact. And then we have done that with Chief  
7 Dowling already, so that is actually something the City has  
8 agreed is a possible and has agreed that that's how we  
9 would move forward. So I disagree with that  
10 characterization that witnesses cannot distinguish or find  
11 it hard to prepare --

12 THE COURT: How many high-level people are both  
13 fact and 30(b)(6)?

14 MS. MARQUEZ: Twelve.

15 THE COURT: Yes, if the City wants to put them  
16 off, I think we should just put them off. I mean, I'm  
17 prepared to have these people, you know, jump into this  
18 pretty quickly, but there's going to be a delay. And I --

19 MS. MARQUEZ: Just as -- oh, sorry.

20 THE COURT: Go ahead.

21 MS. MARQUEZ: I'm just looking at the schedule  
22 right now, and I only see five cross-designees. And there  
23 are some high level that are not 30(b)(6) at all, for  
24 instance, the named defendants, Terence Monahan and De  
25 Blasio.

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2 MS. NELSON: And then we have Steven Hughes, David  
3 Miller, James Kahn, Dean --

4 THE COURT: Okay. Folks, just because someone is  
5 fact doesn't mean that these new plaintiffs might not need  
6 to depose them. That's the test. These people need to  
7 depose them as fact witnesses. It's unreasonable to expect  
8 the City to have them come twice. That's the test.

9 We're not going to solve this now. There's going  
10 to have to be some delay in the deponents for whom the PBA  
11 and their claims, which apparently are going to be limited  
12 to injunctive relief. You know, to the extent they're  
13 going to be able to say that they should have discovery  
14 from a particular deponent on those topics, if that's  
15 reasonable expectable, then we have to put these off  
16 temporarily. Anyone else should go forward.

17 MS. MARQUEZ: This is Lillian Marquez again. Does  
18 your Honor mean to delay also the line-level officers that  
19 have yet to be --

20 THE COURT: No, no, no, that's my point.

21 MS. MARQUEZ: Okay.

22 THE COURT: Those are not people for whom, you  
23 know, injunctive relief -- they're not going to have  
24 evidence with respect to injunctive relief, it seems to me.  
25 All right --

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2 MX. GREEN: Your Honor, it seems then, you know,  
3 in some ways maybe this is a blessing in disguise in that  
4 it lets us focus on making sure that before all of these  
5 depositions we actually get document discovery as close to  
6 done as we can. And so maybe we should turn back to that  
7 and kind of --

8 THE COURT: Yes, I agree.

9 MX. GREEN: -- figure out how we're resolving  
10 those issues in the interim.

11 THE COURT: Okay. I think we have to accept that  
12 Ms. Weiss's health is, unfortunately for her and --  
13 obviously -- but in terms of everything else, that's  
14 something we have to consider in terms of what's happening  
15 next. So let's see --

16 MX. GREEN: Your Honor --

17 THE COURT: Hold on, hold on. Let's see how soon  
18 she can be involved.

19 In the meantime, Ms. Weng and Ms. Nelson, I mean,  
20 I don't know -- well, go ahead, Mx. Green, what's your  
21 proposal?

22 MX. GREEN: Yeah. So I think that the -- our view  
23 is that the chart wasn't done in the way that is  
24 particularly helpful. And maybe with Ms. Weiss out and,  
25 you know, call it the little extra breathing room we have,

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2 another round of doing it makes sense where what they tell  
3 us is, you know, to be clear, right, what are we going to  
4 get, what searches are they doing to get us that, what are  
5 they withholding. And I think "withholding" should cover  
6 both what are they withholding on the new searches, but  
7 also if they withheld something or didn't search for  
8 something the first time around, given that we have, you  
9 know, a live dispute about the adequacy of their previous  
10 searches and their previous withholdings and we found  
11 things, big categories of things that are missing, right,  
12 so that what they tell us they're withholding has to be  
13 what they've withheld in toto. And if we can get a chart  
14 that actually covers all of that, I think by the time  
15 Ms. Weiss is better, then perhaps we can have a very  
16 productive meet-and-confer where we're actually talking  
17 about what we're getting and what we're not getting, not  
18 what information is hiding behind the words Documents To Be  
19 Produced.

20

MS. NELSON: Your Honor --

21

THE COURT: So -- yes, go ahead.

22

MS. NELSON: This is Ms. Nelson. I just want to  
23 be clear it's what we are going to be producing. My  
24 understanding is that document production has been going on  
25 in this case for a year. It's not what was previously

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2 produced but what we are going to produce and whether we  
3 have any objections and are withholding on those  
4 objections. And I think that can be on the chart.

5 MX. GREEN: Your Honor --

6 THE COURT: Just so we're clear, in some cases you  
7 said, "See our prior production." So -- and without any  
8 other explanation -- so for those categories they don't  
9 know if -- you know, imagine if some very narrow --

10 MS. NELSON: Again --

11 THE COURT: Let me finish my sentence.

12 Imagine if some very narrow categories produce all  
13 documents -- which I know is not even on the list -- but  
14 produce all documents for Jane Doe's arrest on June 5th,  
15 okay? No produce the arrest reports for Jane Doe's -- or  
16 arrest documents for Jane Doe's arrest on June 5th. Okay.  
17 They need to know what it is you're produce -- that  
18 sentence encompasses A through J. You know, it could mean  
19 a notebook, it could mean the online sheet, whatever they  
20 are.

21 MX. GREEN: Yes.

22 THE COURT: If you are agreeing to produce  
23 everything, then that's fine, but what you need to do is to  
24 in some way indicate what your search involved. So you  
25 should say, "We're producing the online arrest reports, the

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2 notebook page of that date," and so forth. You should  
3 explain what it is you're producing. Or you could say,  
4 "We're relying on the email search, you know, the search  
5 terms. That's whatever it is, and that's what we think is  
6 all we have to do for this." You have to express what it  
7 is that is being produced. And if there's something you  
8 know is not being produced that's within that category, you  
9 have to say that, as well. Do you understand what I'm  
10 saying?

11 MS. NELSON: I want to make sure I understand,  
12 your Honor. So the request is there. We will say what we  
13 will be producing in terms of --

14 THE COURT: Yes, and that's -- or if you say, "We  
15 already produced it," say what it is you have produced.

16 MS. NELSON: Well, I think that's where the  
17 misunderstanding might have come in with the chart, your  
18 Honor. To the extent we're talking about going back  
19 through a year's worth of production, that's where the  
20 Previously Produced was indicated on the chart.

21 THE COURT: Well, how are they supposed to know  
22 what it is? How do you know what it is? How do you know  
23 it's been previously produced?

24 MS. NELSON: Again, I think we need Ms. Weiss's  
25 input there, but my understanding is that's the way the

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2 chart was prepared. So for --

3 THE COURT: I understand that, and I'm trying to  
4 say why is it insufficient if you just say --

5 MS. NELSON: Okay, your Honor --

6 THE COURT: -- In response to the request  
7 Previously Produced, they need some hint about what you're  
8 talking about, because they don't think they have -- in  
9 some cases they don't think they have it.

10 MS. NELSON: We will try to do that for --

11 THE COURT: I'm not saying you have to come up  
12 with Bates numbers. There could be some other reasonable  
13 way you could express --

14 MS. NELSON: Okay.

15 THE COURT: -- what production you're referring  
16 to.

17 MS. NELSON: Okay.

18 THE COURT: For example, in an email search you  
19 could say, "We did an email search with everything with  
20 this term, and therefore, if there was anything, it's  
21 that." I'm not saying you have to go and find those; you  
22 could just say, "We thought our email thing was sufficient  
23 to produce all that." There may be 100 other examples of  
24 what you could say that didn't actually require Bates  
25 numbers. I mean, you could say, "We produced all IAD

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2 documents with respect to this set of people, and  
3 therefore, we think that's sufficient to comply with this  
4 document request; and, you know, that was previously  
5 produced." And I'm not saying you have to go through and  
6 find the Bates numbers for them.

7 MS. NELSON: Understood. So, your Honor --

8 THE COURT: But there has to be some  
9 identification.

10 MS. NELSON: Right. I just want to repeat what  
11 I --

12 MX. GREEN: Your Honor --

13 MS. NELSON: -- think your instructions --

14 THE COURT: Hold on. Let's hear from Mx. Green  
15 before you repeat it.

16 MX. GREEN: Here's the fundamental problem I see  
17 with that. We have -- we've made a bunch of motions at  
18 this point on the issue that in essence -- and this is what  
19 the metadata on the document says -- and this has been  
20 confirmed by NYPD reps at meet-and-confers -- what they did  
21 for the vast majority of document requests and documents  
22 produced on July 31st is they took what they gave the OIG  
23 and the AG in the investigation and just reproduced it.  
24 And they have spent a couple of months rereviewing it,  
25 apparently redacting it in a different way this time around

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2 and then reproducing it. And so, for example, the Court  
3 mentioned IAB documents. IAB documents cut off as of the  
4 date that they produce to the OAG and OIG. Right? And the  
5 reason it cuts off at that date is because they couldn't  
6 have produced future documents at that point.

7 And so one of the biggest issues here -- and we've  
8 made motions on this, and we've met and conferred for  
9 dozens of hours on it -- is that when they say Previously  
10 Produced, they are not telling us what they withheld on the  
11 basis that it happens that it wasn't what was collected in  
12 the OAG and OIG investigation. And we know this because  
13 Ms. Fitzpatrick, who is the head --

14 THE COURT: I lost -- I lost the last sentence. I  
15 didn't understand what you just said.

16 MX. GREEN: Okay. Sorry. And we know this  
17 because the head attorney at -- who does discovery at the  
18 NYPD, who is Bridget Fitzpatrick, said that what happened  
19 when they were collecting documents is a lot of the  
20 precincts they sent requests to said, "Isn't this just the  
21 same request we got a year ago?" And what Ms. Fitzpatrick  
22 said to them was, "Yes, just produce it again."

23 And, of course, it's not the same requests, and  
24 it's not the same documents. And that cuts it off as of a  
25 certain date. So there are already huge categories that are

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2 missing. And what's working behind the "we already  
3 produced it" representation is whatever differences there  
4 were in the requests between the AG requests and our  
5 requests in the consolidated cases, what's working behind  
6 there is, you know, that entire date range after those  
7 requests in 2020. And, of course, there are many more  
8 documents that were generated after that, and many of the  
9 protests at issue here were after that investigation got  
10 its production. And so, you know, that's the kind of stuff  
11 we're missing and that's hiding behind the Documents  
12 Previously Produced.

13 MS. NELSON: Your Honor --

14 THE COURT: Your solution is what?

15 MX. GREEN: My solution is I think that, you know,  
16 they should say what they have produced, maybe by Bates  
17 number, because I don't see another way to do it where we  
18 can check their work conveniently. And when they say what  
19 they're withholding, I think they need to say, you know,  
20 what they've withheld in toto, not just what they're  
21 withholding from their new searches but what they  
22 previously withheld. And I don't think that should be that  
23 hard to generate if they've kept good records of what  
24 they've searched for.

25 MS. NELSON: Your Honor, that is not my

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2 understanding of what the Court instructed us to do. This  
3 is a different request that is being made now. What we're  
4 now asked to do is go through the previous production, and  
5 Mx. Green now wants us to give Bates numbers for every one  
6 of those requests. That is not what the judge ordered us  
7 to do.

8 THE COURT: Well, it has to be identified. You  
9 can't just say "previously produced." You have to say what  
10 it -- how on earth are they supposed to know what you would  
11 tell, what you're produced, what it is? So you're going to  
12 have to figure out some ways. It's date numbers, it's  
13 Bates numbers; if it's something else, it's something else.

14 MS. NELSON: Okay, we will --

15 MX. GREEN: And, to be clear, I'm not asserting  
16 that the Court previously ordered this. I'm saying this is  
17 how I think we fix the problem.

18 THE COURT: I mean, you have to say -- if someone  
19 gives you a document request, you have -- I mean, you have  
20 to say it was produced -- you have to identify in some way  
21 where it is. But very importantly, you have to say what  
22 wasn't produced within that category --

23 MS. NELSON: Yes. And I -- I think we've tried to  
24 do that with the chart, your Honor, for the items that we  
25 are going to produce. Right? So I noted that we had

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2 Column B -- forgive me, not B -- E and F, where we tried to  
3 indicate there whether or not -- and your Honor was very  
4 precise about the type of objections that we could raise,  
5 so we didn't raise all objections; we wanted this to be  
6 very clean. It is as to -- where we're withholding as to  
7 privilege or burden and then explain why. And that's what  
8 we did for the chart. We didn't put all objections on  
9 there. That wasn't what the Court ordered. In fact,  
10 that's what the Court cautioned against.

11 MX. GREEN: Your Honor, may I just ask a  
12 clarification, because I do not understand the chart? Does  
13 that mean that there are relevance withholdings that are  
14 not reflected on the chart?

15 MS. NELSON: My apologies. If there was a strong  
16 relevance objection, I believe we put it on there; but we  
17 didn't put it on there for all the ones that we thought  
18 might not be relevant but we're going to produce something.  
19 That's my understanding of the chart, and my apologies, I  
20 cannot speak further to the contents of the chart beyond  
21 that.

22 THE COURT: You're going to have to talk to  
23 Ms. Weiss. I mean, I don't -- the chart has to indicate  
24 what it is within a request that you're producing and that  
25 you're not producing.

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MS. NELSON: Understood.

3

THE COURT: And if you're not producing something,  
4 then you have to say what the burden --

5

MS. NELSON: Right.

6

THE COURT: -- and say why you're not producing  
7 it. And, I mean, if you think it's irrelevant, I think you  
8 have to say that, too, if there's some piece of it that's  
9 irrelevant.

10

MS. NELSON: I think I misspoke, your Honor. I  
11 think that is part of the chart. It's privilege, burden or  
12 relevance. We did not --

13

THE COURT: I don't think you have any other  
14 objection.

15

MS. NELSON: Well, we didn't include any others  
16 because we wanted --

17

THE COURT: No, I don't think you have --

18

MS. NELSON: -- to (indiscernible).

19

THE COURT: -- (indiscernible) what is there?

20

MS. NELSON: Understood. I just wanted you to  
21 know that we tried to follow the instructions that were  
22 given by making the chart clean and only including those  
23 three types of objection.

24

THE COURT: Well, if there's other objections,  
25 we'd better know about them.

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MS. NELSON: I --

3

THE COURT: I don't recall telling you that you  
4 could have secret objections.

5

MS. NELSON: No, not secret objections, your  
6 Honor. I think your instruction was only include the  
7 objections where you are withholding something. And so  
8 there are other objections that you would normally make  
9 under Rule 33 in --

10

THE COURT: In other words -- right, yes, in other  
11 words, if you made some objection but you're producing it  
12 anyway, I agree, don't waste our time with that.

13

MS. NELSON: Exactly.

14

THE COURT: That's all we're talking about. Yes,  
15 that's fine. But if you're withholding something, then,  
16 yes, you have to explain what you're withholding and why.  
17 You have to describe it and you have to say why.

18

MS. NELSON: But I think we did that --

19

MX. GREEN: And, your Honor, if I --

20

MS. NELSON: -- for most of the chart. We will  
21 look at the chart again, your Honor, with those  
22 instructions in mind.

23

MX. GREEN: And, your Honor, I suppose let me do  
24 two things, one being -- and if -- it's not just  
25 withholding, right? If they limited the scope of their

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2 search on the basis of some objection that's not privilege  
3 or burden, then we need to know about that, too, right?  
4 Because then -- and I know there are documents that fit  
5 this --

6 THE COURT: Say that again. Say it again. Say  
7 what you said again. I'm sorry, "scope"? Say it again.

8 MX. GREEN: If, for example, they didn't go search  
9 in someplace because, I don't know, maybe they didn't think  
10 they were going to find relevant documents there -- that's  
11 probably the wrong one -- but we know that they limited  
12 their search such that they either didn't give us a  
13 privilege log or identify as withholding. For example, the  
14 draft After Action Report from the 2020 protest, we know  
15 that this document exists. It's not on any privilege log,  
16 and nothing states they're withholding it. We know it  
17 exists because it's mentioned in dozens of interviews --  
18 maybe not dozens, but a couple of interviews. And so, you  
19 know, it seems to us that there are also limitations that  
20 we don't know about based on where they searched. And so  
21 the chart, I think, needs to say what were the limitations  
22 on your searches as well that meant that you didn't find  
23 documents?

24 THE COURT: Well, to the extent you're expressing  
25 a burden of doing everything within the document request,

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2 then that is going to be described when you say it's too  
3 burdensome. You can't just say it's too burdensome; you  
4 say -- you're going to have to say, "Well, it's too  
5 burdensome to search in this particular place, so we didn't  
6 do that; instead, here's what we did."

7 MS. NELSON: Your Honor, I don't understand  
8 about -- I don't understand the explanation about searching  
9 in a particular place. If the document request is for a  
10 particular thing, let's say an IAB file, we are going to  
11 search those databases that would have that information.  
12 Maybe I'm missing something --

13 THE COURT: Okay, if there's something that -- I  
14 say we can't do this without specific requests -- if the  
15 request asks for a particular thing and it's very easy for  
16 you to get this particular thing by searching a particular  
17 way but there's a possibility that something that fits  
18 within that category could be buried under someone's desk  
19 or in a warehouse and you have no idea how to find it and  
20 you say, "Well, that -- you know, it's possible there's  
21 documents there that are nonduplicative that are also  
22 responsive to the request, it's not worth searching," you  
23 have to explain what it is that you're not searching for  
24 that's within that request.

25 MS. NELSON: And I think that's what --

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2 THE COURT: You know what's non -- if you know  
3 there's some nonduplicative thing within a request that  
4 you're not searching for and it's clearly called for by the  
5 request, you have to say, "I didn't search the warehouse  
6 because that would be too much."

7 MS. NELSON: Right. So --

8 MX. GREEN: And, your Honor, let me just put  
9 something concrete on this, because I think you're right;  
10 it's hard to talk about it abstractly. Let's talk about  
11 IAB reports. We don't have IAB reports after a particular  
12 date. That is, in our understanding, because they just  
13 reproduced whatever was produced to the AG and OIG. But  
14 there's nothing in the chart and there's nothing in any  
15 objection that states that they are limiting their search  
16 to documents generated by the IAB before a certain date.  
17 All it says is Documents Previously Produced --

18 MS. NELSON: Understood.

19 MX. GREEN: -- but this is something, you know, we  
20 raised in the motion --

21 THE COURT: Okay. Do you see this problem,  
22 Ms. Nelson?

23 MS. NELSON: I understand that objection that  
24 Mx. Green just raised.

25 THE COURT: Okay. So that has to be clarified on

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2 the chart, what you're doing, what you're not going to do.

3 MX. GREEN: And, your Honor, this is the first  
4 consolidated protest request motion that we've made, I  
5 think three times now, which is, you know, we sent them  
6 that letter last year in September listing all the  
7 categories of documents we were missing --

8 THE COURT: Okay. Mx. Green, we've got to --  
9 right now I want to just figure out what to do next.

10 MS. NELSON: I just want to -- I'm looking at the  
11 chart right now, and I believe what your Honor is asking  
12 for and what Mx. Green just raised is on the chart. She's  
13 talking about IAB files, and we have burden argument we put  
14 in -- our objection is that producing the document is  
15 unduly burdensome, and then we have an explanation as to  
16 the burden.

17 MX. GREEN: Which -- sorry, let's all look at  
18 the same place on the chart. Which request are you  
19 looking --

20 MS. NELSON: I think it's 18, Row 18, Document  
21 Request Number 17. I don't think we need to go into  
22 all of it, and again, I --

23 MX. GREEN: But the --

24 MS. NELSON: -- apologize -- I'm going to  
25 apologize because my knowledge of the chart is

1 PROCEEDINGS 52  
2 limited. I'm just pointing out this one particular  
3 item.

4 MX. GREEN: I mean, 18 is Academy Transcripts.

5 MS. NELSON: Document Request Number 17. I'm  
6 at Row 18.

7 MX. GREEN: That's not the request we're  
8 talking about.

9 MS. NELSON: I didn't say it was the request  
10 you're talking about. I'm talking about IAB  
11 investigation files.

12 MX. GREEN: Right. But we're talking IAB  
13 requests, investigation files that were due July 31st  
14 last year, not a new request.

15 MS. NELSON: What I'm trying to point -- this  
16 is not a new request, and what I'm trying to point out  
17 is to the extent that there is an objection and a  
18 burden, it has been explained.

19 THE COURT: Okay, folks, listen. Mx. Green,  
20 I'd like you to take -- to continue discussing this  
21 with Ms. Nelson offline. Your goal is to get a redone  
22 chart as soon as you can. I think it may be helpful  
23 to have Ms. Weiss involved if we're going to have this  
24 be fruitful. We're --

25 MS. NELSON: I agree.

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2                   THE COURT: -- going to have to have some delay  
3 due to the intervenors. So why don't you take it day  
4 by day next week and see if you can figure out a way  
5 to put this together and have your discussion, then  
6 bring me any disputes. I just don't think we can  
7 solve this right now.

8                   MX. GREEN: All right, your Honor. I suppose  
9 the thing I will ask for, then, is what -- can we say  
10 that one of the things that we need to figure out is  
11 how they're going to identify documents for us. And  
12 so, you know, if it's not Bates numbers, we need an  
13 agreed-upon way to identify them.

14                  THE COURT: Yes. You need to talk to Ms. Weiss  
15 and explain to her the problem with all those  
16 statements. I agree there's a problem.

17                  MX. GREEN: Okay. And so just so that we're  
18 all super-clear, because I had thought we were at  
19 least somewhat clear before, what the new chart needs  
20 to do is across all of the requests and all of the  
21 productions state what it is they think we have and  
22 what it is they think they're going to give us and  
23 what it is that across time they have withheld; is  
24 that right?

25                  THE COURT: They have to state what they have

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2 withheld or plan to withhold, yes.

3 MX. GREEN: Yes. Okay. Great. I think we can  
4 do that.

5 THE COURT: Well, it's the City who has to do  
6 it.

7 Okay, all right, so I'll wait to hear from you  
8 as to, you know, what the next thing is. In the  
9 meantime, an order will be issued about the  
10 intervenors.

11 MS. NELSON: Thank you, your Honor.

12 MS. MARQUEZ: Your Honor -- your Honor, this is  
13 Lillian Marquez from the AG's Office. If I may make one  
14 last request regarding the depositions with regard to the  
15 line-level officers? So there remains to be scheduled  
16 about five line-level officers. To be most efficient about  
17 our time in the midst of this sort of delay for the higher  
18 levels, I'd ask that we have a deadline for the City to  
19 propose dates within the current schedule to schedule those  
20 unscheduled line officers and that it be made clear that,  
21 as with the higher levels, that lack of preparation is not  
22 a reason to cancel, rather it should just be limited to  
23 emergent circumstances, as you earlier explained.

24 THE COURT: I think my order about emergent  
25 circumstances related to the high-level people who I

1 PROCEEDINGS 55  
2 assumed were a lot harder to reschedule than line officers.  
3 So I think you're asking for something new right now. Yes,  
4 my order was about high-level people.

5 MS. MARQUEZ: If we could get a date to schedule  
6 these unscheduled line officers, given that we --

7 THE COURT: Yes. Let's -- any problem getting  
8 them dates in the next week to do this?

9 MS. NELSON: We can -- I'll defer to Ms. Robinson,  
10 but I think we can get them done by next -- get schedule  
11 dates by next Friday.

12 THE COURT: Yes. Schedule dates --

13 MS. ROBINSON: Yes, your Honor. This is Amy  
14 Robinson --

15 THE COURT: Ms. Robinson, any problem with that?

16 MS. ROBINSON: I don't see any problem with that,  
17 your Honor.

18 MS. NELSON: Your Honor, I would also like if  
19 Ms. Marquez can send me the name of those five officers  
20 that she believes --

21 THE COURT: I don't think you need me to order  
22 that. I'm sure you can talk to her directly about that.

23 MS. ROBINSON: Thank you, your Honor.

24 MS. MARQUEZ: And I'll just correct my -- this is  
25 Lillian Marquez again -- I'll just correct myself. It's

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2 five unscheduled for the ones that were in most of the  
3 consolidated actions, but then there were a few that joined  
4 in later in time. So Hernandez and Gray may still have  
5 some that are unscheduled. But we could speak offline. I  
6 just want to put that on the Court's radar.

7 THE COURT: All right.

8 MX. GREEN: And before we go, if we are wrapped  
9 with the -- oh, sorry, I assume you were about to say  
10 something on that.

11 THE COURT: No, go ahead. What else?

12 MX. GREEN: Before we are wrapped on that, I  
13 think, you know, we kind of derailed from dealing with the  
14 staffing issue when we discussed the Second Circuit's  
15 mandate. But, you know, I think the staffing issue is  
16 plugging into every single issue here. And, you know, it  
17 plugged into the motion that we filed this morning because  
18 the defendants missed the two very clear deadlines to  
19 produce the Mullens and Payne documents that the Court  
20 ordered. And so, you know, I think -- I don't know how we  
21 deal with it, but I think we should have something on  
22 staffing.

23 THE COURT: I'm not ready to deal with staffing  
24 right now. Ms. Weng, any idea why you violated my order?  
25 Did you violate my order -- not you, the City?

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2 MS. WENG: I'm not sure I can speak to this  
3 because I'm -- actually wasn't involved in that, so I  
4 apologize, your Honor.

5 THE COURT: Anyone here know about it from the  
6 defendants?

7 MS. NELSON: I cannot speak to it, either, your  
8 Honor. Apologies.

9 THE COURT: I mean, it's pretty serious. I mean,  
10 I --

11 MS. NELSON: I understand. But we really tried to  
12 staff the case and so there are assignments are given to  
13 different individuals --

14 THE COURT: Who was in charge of this?

15 MS. NELSON: I --

16 THE COURT: Who's in charge of making sure my  
17 order was complied with --

18 MS. NELSON: Well, the entire team, your Honor,  
19 should be. But as to Payne, I just don't recall who the  
20 attorney is that's assigned to that matter.

21 THE COURT: And it's not someone on the call right  
22 now?

23 MS. NELSON: It's not Ms. Weng or I, no.

24 THE COURT: Or Ms. Robinson?

25 MS. NELSON: Or Ms. Robinson.

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THE COURT: All right, well, you'd best respond to  
this letter within the two business days, which is Tuesday.  
And whatever your response is, I'd like to be -- who's the  
head of your unit?

6

MS. NELSON: The head of the Special Federal  
Litigation Unit?

8

THE COURT: Yes.

9

MS. NELSON: Patricia Miller.

10

THE COURT: Ms. Miller should sign the letter in  
addition to whoever else signs it. Got it?

12

MS. NELSON: Got it.

13

THE COURT: Okay. All right, Mx. Green, anything  
else for now?

15

MX. GREEN: No. We will confer next week, and I'm  
sure we'll either send you opposing letters or a letter  
telling you what we think we should do with the chart.

18

THE COURT: Okay. All right. Thank you,  
everyone. Good-bye.

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(Whereupon, the matter is recessed.)

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C E R T I F I C A T E

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I, Carole Ludwig, certify that the foregoing

transcript of proceedings in the case of In Re: New York  
City Policing During Summer 2020 Demonstrations, Docket  
#20-cv-08924-CM, was prepared using digital transcription  
software and is a true and accurate record of the  
proceedings.

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Signature Carole Ludwig

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Carole Ludwig

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Date: March 4, 2022

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